



City of Hampton

## REQUEST FOR PROPOSALS

**ISSUING OFFICE:**

Consolidated Procurement Division  
1 Franklin Street, Suite 345  
Hampton, Virginia 23669  
Telephone: (757) 727-2200  
FAX: (757) 727-2207

**DATE:** February 21, 2013

Attention of Offeror is directed to Section  
2.2-4367 to 2.2-4377 Code of Virginia  
(Ethics in Public Contracting)

<b>RFP ITEM NO.</b> 13-323199/D
<b>PROCUREMENT OFFICER</b>  Doris McRae, CPPB Procurement Manager
<b>CLOSING DATE</b> 03/19/13
<b>CLOSING TIME</b> 3:00 P.M. EST
<b>PREPROPOSAL CONFERENCE</b> N/A

**SEALED PROPOSALS** will be received in the Issuing Office above until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. The City of Hampton is not responsible for late delivery by the United States Postal Service or any other courier.

All inquiries for information regarding this Request for Proposals are to be directed to the Issuing Office as defined herein.

**COMMODITY: Description:** Executive Search Firm  
**NIGP CODE:** 918-64 and 961-30

**PLEASE FILL IN OFFEROR'S NAME & ADDRESS IN THE SPACES PROVIDED BELOW:**

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**THIS IS NOT AN ORDER**

The City of Hampton, hereafter referred to as "the City", reserves the right to accept or reject any and all proposals in whole or in part and waives any informality in the competitive negotiation process. Further, the City reserves the right to enter into any contract deemed to be in its best interest. The entire contents of the Request for Proposals, and addenda, offeror's proposal and negotiated changes shall be incorporated by reference into any resulting contract.

**The City of Hampton does not discriminate against faith-based organizations.**

**THE CITY OF HAMPTON IS SEEKING PROPOSALS FROM QUALIFIED OFFERORS TO PROVIDE AN EXECUTIVE SEARCH SERVICES FOR CHIEF OF POLICE.**

**ACKNOWLEDGE RECEIPT OF ADDENDUM:** #1\_\_\_\_\_ #2\_\_\_\_\_ #3\_\_\_\_\_ #4\_\_\_\_\_ (Please initial)

The City of Hampton cannot legally agree to any clause indemnifying the contractor from any damages arising out of the contract/agreement/lease or holding the contractor harmless. The submission of a bid or proposal constitutes an agreement by the contractor not to request such language in the resulting contract. In compliance with this solicitation and to all the conditions imposed herein, the undersigned agrees to perform any contract awarded as a result of this solicitation. The following section shall be signed by an agent authorized to bind the company. Failure to execute this portion may result in proposal rejection.

**AUTHORIZED AGENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
FAX

\_\_\_\_\_  
Company FEIN/FIN#

**ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-0.1 THROUGH 59.1-9.17 OR SECTIONS 58.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, CITY HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSON, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE INTERESTED IN, THIS PROPOSAL.

**DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE CONTRACTOR'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE CONTRACTOR'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR THAT THE CONTRACTOR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A CONTRACTOR IN ACCORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

**EMPLOYMENT DISCRIMINATION BY THE SUCCESSFUL OFFEROR SHALL BE PROHIBITED:**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:
  - a. THE OFFEROR SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE CONTRACTOR. THE CONTRACTOR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b. THE CONTRACTOR, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACE BY OR ON BEHALF OF THE CONTRACTOR, SHALL STATE THAT SUCH CONTRACTOR IS AN EQUAL OPPORTUNITY EMPLOYER.
  - c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
2. THE CONTRACTOR WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000 SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

**NAME OF OFFEROR:**

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Tax Identification Number / Social Security Number: \_\_\_\_\_

Is Offeror a "minority" business? ☐ Yes ☐ No If yes, please indicate the "minority" classification below:☐ African American ☐ Hispanic American ☐ American Indian ☐ Eskimo ☐ Asian American ☐ Aleut ☐ Other; Please ExplainIs Offeror Woman Owned? ☐ Yes ☐ NoIs Offeror a Small Business? ☐ Yes ☐ NoIs Offeror a Faith-Based Organization? ☐ Yes ☐ No

## **I. PURPOSE**

The purpose of this RFP is to solicit sealed proposals from qualified offerors to provide the City with seeking professional executive search services to assist it in recruiting and selecting a new Chief of Police. The successful firm will assist the Human Resources Department with various tasks associated with the recruitment and selection process to fill the position.

## **II. BACKGROUND**

### **Hampton, Virginia**

Hampton is an independent city located in Virginia. It is on the southern end of the Virginia Peninsula, bordering Hampton Roads and the Chesapeake Bay. According to the United States Census Bureau, the City has a total area of 136.2 miles; 51.8 miles of it is land and 84.4 miles of it is water, with a total population of 146,437.

The City boasts a strong military and technology presence. Langley Air Force Base is home of the First Fighter Wing. NASA Langley Research Center, where America's first astronauts were trained, is now a major center for aviation research. Technology centers of employment include companies such as Sverdrup, Howmet Corporation, Computer Sciences Corporation and Nextel Communications. Hampton is also home to Hampton University and Thomas Nelson Community College.

Hampton is served by two airports. The primary airport for the Hampton Roads area is Norfolk International Airport, on the opposite side of Hampton Roads in Norfolk. The region's secondary airport, Newport News/Williamsburg International Airport, is located on the Virginia Peninsula in Newport News.

Hampton is part of a dynamic metropolitan region. Besides Hampton, the region contains four other cities with a population greater than 100,000. The region now has a population of more than 1.6 million and grew at a rate of 6.2% from 2000 to 2009. Hampton Roads is the 36<sup>th</sup> largest MSA in the nation. Its effective buying power (EBI) according to Sales, Marketing and Management is more than \$20.8 billion.

Demographically, Hampton is in many ways typical of metropolitan America. It contains within its boundaries an urban core, a ring of older, settled neighborhoods and newer suburban development. Its citizens' age, educational, occupational and socio-economic characteristics by and large reflect the typical American demographic profile. The City's demographic data may be accessed by the hyperlink: <http://hampton.gov/ed/stats/>

The City reserves the right to split the award of this RFP should it be determined by the City, in its sole discretion, to be in the City's best interest as outlined in paragraph DD.

## **III. SCOPE OF WORK**

### **A. General Requirements:**

#### **1. Statement of Needs/Scope of Work**

The City is seeking professional executive search services to assist it in recruiting and selecting a new Chief of Police. The successful firm will assist the Human Resources Department with various tasks associated with the recruitment and selection process to fill the position.

#### **2. Candidate Profile**

The consultant will develop a candidate profile of the next police chief using input from key stakeholders including the interim police chief, members of the police department, city department heads, community leaders and other stakeholders identified by the city manager to develop information regarding specific issues and opportunities facing the City. The consultant will determine the desired education, experience, background, management skills and style desired in the new Chief of Police.

### **3. Job Analysis**

The consultant will perform a job analysis to identify the tasks performed on the job and the knowledge, skills, abilities, and personal characteristics needed to perform those tasks. The job analysis will be used in the development of the assessment center exercises. The consultant will review the current job description to ensure alignment with the job analysis.

### **4. Outreach**

The consultant will assist the City with active outreach and solicitation of individuals with superior qualifications to encourage them to become part of the pool of prospects. It is anticipated that this activity will range from the circulation of announcements in professional journals to extensive personal contacts with prospective candidates.

### **5. Screening Resumes/Applications**

Using the job analysis results and input from the City, the consultant will develop a resume screening instrument to be used by the City to review and evaluate resumes of all candidates and determine who should be considered for Phase I interviews.

### **6. Candidate Screening Interviews (Phase I)**

The consultant will develop the appropriate questions for the use by the City to conduct the Phase I screening interview process. The City will conduct initial interviews by phone and in person with those candidates deemed qualified for further consideration to discuss their skills and competencies and experience as they relate to this job.

### **7. Candidate Assessments (Phase II)**

Using the job analysis results and input from the City, the consultant will develop assessment center exercises focused on the needs of the City and designed to assess those critical competencies enabling excellent performance in the position of Chief of Police. The consultant will provide training for the exercises to the identified individuals who will assess the assessment center performance.

### **8. Final Interview (Phase III)**

The consultant will develop a structured interview focused on the critical competencies for the City to further evaluate the best candidates remaining after the assessment center.

Complete personal interviews with top candidates, which will focus on an assessment of the candidates' skills, background, and experience as well as an assessment of the candidates' strengths and weaknesses.

### **9. Final Report/Recommendations**

The consultant will present a final list including written candidate profile and recruitment report to the City on the top candidates. For those candidates considered through all phases of the process. City officials will consider all information and make a final selection. Candidates may be invited to a final interview with city officials before a final decision is made.

#### **Issuing Office:**

Wherever used in this Request for Proposal, Issuing Office will be:

Doris McRae, Procurement Manager  
Consolidated Procurement Division  
1 Franklin Street, Suite 345  
Hampton, Virginia 23669

Phone: (757) 727-2206  
Fax: (757) 727-2207  
Email: dmcrae@hampton.gov

Wherever used in this Request for Proposal, and for purposes of any notices under this contract, the City Contract Administrator will be:

James Gray, Assistant City Manager  
City Manager Office

Phone: (757)727-6884

#### IV. SPECIAL INSTRUCTIONS TO THE OFFEROR

**A. Contact with City/City Staff, Representatives, and/or Agents:**

Direct contact with City staff, representatives, and/or agents other than the Consolidated Procurement Division staff on the subject of this RFP or any subject related to this RFP is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent or designated representative.

**B. Offerors of Record:**

Offerors receiving a copy of this RFP from a source other than the Issuing Office must contact the Issuing Office and provide Offeror's name, address, contact person, telephone and fax number, along with the RFP Item Number. Offeror will be added to the City's list of Offerors of Record and will receive notification of any addenda to the RFP.

**C. Questions:**

Offerors must submit questions regarding the Request for Proposals in writing to the Issuing Office via fax (757) 727-2207 or email questions to [dmcrae@hampton.gov](mailto:dmcrae@hampton.gov) no later than **4:30 PM EST on Friday, March 4, 2013**. Necessary replies will be issued to all Offerors of Record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the proposal documents.

Offeror is responsible for checking website <http://www.Hampton.gov/bids-contracts> or contacting the Issuing Office within 48 hours prior to proposal closing to secure any addenda issued for this RFP.

**D. Changes or Modifications:**

Changes or modifications to this Request for Proposals made prior to the date and time of closing will be addressed by addenda from the Issuing Office. Offerors are to acknowledge receipt of addenda in the space provided on the cover page of this Request for Proposals. Oral communications are not a part of the proposal documents. This RFP and any addenda shall be incorporated, by reference, into any resulting contract.

**E. RFP Closing:**

Offeror shall ensure its proposal is time stamped by the Issuing Office no later than the Closing Date and Time shown on the cover page of the Request for Proposals. Proposals received after the specified date and time (time stamped 3:01 PM or later) will not be considered and will be returned to the Offeror unopened.

**H. Proposal Submittal Requirements:**

1. Each proposal submission shall be submitted to the Issuing Office and shall include the following:
  - a. The cover page of this Request for Proposals and it will contain:
    - 1) Original signature of an agent authorized to bind the company
    - 2) Requested contact information
    - 3) Company Federal Employer Identification Number
    - 4) Acknowledgement of any addenda received
  - c. Completed and signed anti-collusion/nondiscrimination clauses on page two.
2. Offerors are encouraged to submit the proposals on recycled paper and to use double sided copying.
3. Proposals must be submitted utilizing the following requirements:
  - a. Offerors shall submit proposals in a sealed envelope or package, and label the envelope or package with the Request for Proposal's Item Number and the name and address of the Offeror. **Proposals received by telephone, email, facsimile, or any other means of electronic transfer shall not be accepted.**
  - b. Submit the original and five (5) copies of the proposal.
  - c. All proposals shall be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this Request for Proposals. Any proposal received after the specified date and time (3:01 PM EST or later) will not be considered and will be returned to the Offeror unopened.
  - d. Proposals must include all elements noted in the "Preparation of Proposals" section below.
  - e. Include a statement setting forth the basis for protection of proprietary information, if any, as detailed in the "Proprietary Information/Disclosure" section.
  - f. Proposals are to be organized in the following tabs:
    - Tab 1 - Experience
    - Tab 2 - Capabilities and Skills
    - Tab 3 - Services to be Provided

Tab 4 - Costs  
Tab 5 - Exceptions  
Tab 6 - Proposed Alternatives to the City Requirements  
Tab 7 - Minority and Woman Owned Business Programs

**I. Evaluation of Proposals**

1. After the proposal opening, the City will select for further consideration two or more Offerors deemed to be fully qualified and best suited among those submitting proposals based on Offerors' responses to the information requested in this RFP.
2. The following criteria will be used in the evaluation process:
  - a. Offeror's experience in providing the services requested
  - b. Offeror's capability and skills to perform the services required
  - c. Services to be provided by the Offeror
  - d. Total cost to the City
3. Exceptions/Alternatives will also be considered.
4. Based on the initial evaluation, the City may request the selected Offerors to make oral presentations. Thereafter, the City will conduct negotiations with each of the selected short-listed Offerors. Individuals representing the Offeror during negotiations shall have the authority to negotiate and contractually bind the company to a contract.
5. After negotiations are completed, the City will select the Offeror who, in the City's opinion, has made the best proposal and shall award the contract to that Offeror (referred to in this RFP as the Contractor). Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
6. The City is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

**J. Presentation/Demonstration:**

If in the City's opinion, vendor presentations or demonstrations of the Offeror's and capabilities are warranted, the City will notify the appropriate vendors. Such presentation or demonstration will be at the City site at a date and time mutually agreed to between the City and Offeror and will be at the Offeror's expense.

**K. Preparation of Proposals:**

In presenting their proposals, Offerors are encouraged to be thorough in addressing the *Specific Requirements* and the *Proposal Submittal Requirements* as outlined in this RFP.

To facilitate the City's evaluation of Offeror's proposal, Offeror is to number all pages of its proposal and provide tabs as indicated above. **Offeror must fully address each of the following items and submit proposals using the following format:**

1. Experience - Provide a concise description of all work experiences as they relate to the scope of work outlined herein. Said description should include, but not be limited to:
  - a. Offeror's established experience record in providing comparable services to organizations similar to the City of Hampton.
  - b. Number and types of customers the Offeror has served with comparable services.
  - c. Number of years Offeror has been providing these types of services.
  - d. A minimum of five (5) references for which Offeror has completed services comparable to those described in this RFP. Include references for work performed in an environment comparable to the City of Hampton. For each reference, detail:
    - 1) Name of firm
    - 2) Address of firm
    - 3) Name, title, address, email address, telephone and fax numbers of a contact for the firm
    - 4) Number of years the Offeror has served the firm
    - 5) Brief summary of scope of services provided to the firm
  - e. Other available documentation to verified Offeror's experience
  - f. A statement detailing why the Offeror is the best candidate to provide the City of Hampton with the services requested in this RFP.
2. Capability and Skill - Describe the qualifications and skills of the organization to provide the services. Said description should provide, but not be limited to, the following information:
  - a. Background information about the organization, e.g., philosophy, ownership, size, facilities and locations, etc.

- b. Offerors management structure of the firm, e.g. organization chart of the firm, project team, etc.
  - c. Size and location of the office that will serve the City of Hampton
  - d. Offeror's qualifications to perform the services, including all resources available to Offeror for the performance of the contract.
  - e. Qualifications and resumes of team members and other employees who will be managing and performing the services under this contract. Projects and client services lists for team members may be submitted.
  - f. Name, title, address, email address, telephone and fax numbers, and work hours of the Offeror's Contract Representative for the following functions:
    - 1) Contact person for prompt contract administration upon award of the contract
    - 2) Contact person during the period of evaluation
    - 3) Authorized agent to accept any notices provided for in this contract
  - g. Indicate the type of organization you represent, i.e. individual, partnership or corporation. If the Offeror is a corporation, list the names of the President, Vice-President, Secretary, Treasurer and all Principals. If the Offeror is a partnership, include the names of all principals or partners.
  - h. A detailed history of all mergers or acquisitions
  - i. A copy of the certificate verifying the firm is registered to do business in the Commonwealth of Virginia.
  - j. If applicable - a detailed list of contractor licenses held, including license class and number
  - k. Offeror's current financial condition. Provide supporting documentation and audited annual reports for the past three (3) years. If company is privately held, supply sufficient information to document the company's financial status and capability to perform under this contract. Include any financial ratings held by the firm.
  - l. If Offeror intends to subcontract any part of the work under this contract, indicate services to be subcontracted and subcontractor(s) to provide said services.
3. Services to be Provided - Provide a detailed description of the services to be provided under this contract. Said description is to address, at a minimum:
- a. An Introduction with an overview of Offeror's understanding of the scope of work and services to be provided.
  - b. Best practice approaches to providing services to the City that enhance efficiency and effectiveness. Innovative solutions will be considered by the City.
  - c. EACH of the *Specific Requirements* set forth under the *Scope of Work* specified in this RFP.
  - d. A detail of any assistance, equipment, or other items the Offeror will require the City to furnish under the contract.
  - e. A statement explaining why the Offeror's proposed solution would be the most advantageous to the City.
  - f. Describe the one attribute that places the Offeror ahead of the competition.
4. Costs - Complete and submit with the Proposal.
- a. Offeror is to provide as an attachment to Appendix A any additional pricing information or alternative pricing structures offered.
  - b. Offeror's prices will be subject to negotiations.
  - c. After negotiations and award of this contract, Contractor's pricing for the services provided under this contract shall be a firm, fixed price during the term of the contract and any extensions.
5. Exceptions/Alternatives - Detail any exceptions taken to the *Scope of Work* and *Terms and Conditions* sections of this RFP. For each exception, specify the RFP page number, section number, and the exception taken. Offeror must not incorporate its standard contract document into its proposal, by reference or in full text, without listing each exception it represents to the terms and conditions of this RFP, as described in the *Exceptions/Alternatives* section of this RFP.
6. Proposed Alternatives to the City Requirements - Detail any proposed alternatives the City's requirements as outlined in this RFP.
7. MINORITY AND WOMAN-OWNED BUSINESS PROGRAM
- The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman-owned businesses, subcontracting goals have been established for City contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.

## **V. GENERAL TERMS AND CONDITIONS**

### **A. Contract Document:**

This RFP, its addenda, Contractor's proposal, any additional information requested, and negotiated changes will constitute the final contract hereafter referred to as this "contract". These documents will be incorporated by reference into the City Purchase Order awarding this contract. This contract shall be governed by the contract documents in the following order of precedence.

1. This RFP document
2. Any negotiated changes to the foregoing documents
3. Offeror's proposal

### **B. Proposal Binding for One Hundred Twenty (120) Days:**

Offeror agrees that its proposal shall be binding and may not be withdrawn for a period of one hundred twenty (120) calendar days after the scheduled closing date of this Request for Proposals.

### **C. Proprietary Information/Non-Disclosure:**

Offeror is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Offeror shall:

1. Invoke the protections of this Section prior to, or upon submission of, the data or other materials.
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "PROPRIETARY".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. The City reserves the right to submit such information to the City attorney for concurrence of the Offeror's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the proposal; however, all information contained within the body of the proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by an Offeror in conjunction with this RFP is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all inclusive statement that the entire proposal is proprietary is unacceptable. A statement that Offeror's costs and/or proposal pricing are to be protected is unacceptable. Offeror will be requested to remove any such statement(s) in order to be eligible for further consideration.

### **D. Contract Modification(s):**

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by the City Purchasing Agent or his designee via issuance of a Change Order (Purchase Order).

### **E. Offeror Obligation:**

Offeror shall carefully examine the contents of this Request for Proposals and any subsequent addenda. Failure to do so shall not relieve the Contractor of its obligation to fulfill the requirements of any contract awarded as a result of this RFP.

### **F. Conditions of Work:**

Offeror shall inform itself fully of the conditions related to services required herein. Failure to do so will not relieve a Contractor of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract.

### **G. Prime Contractor:**

If in its performance of this contract, Contractor supplies services by or through another party or subcontractor, Contractor agrees that:

1. Contractor shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
2. Contractor represents and warrants that Contractor has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that the City is not liable to such third parties or subcontractors for any work performed under this contract.
3. The use of subcontractors and the work they perform must receive the prior written approval of the City. The City will designate a Contract Administrator to approve such work.



4. Contractor shall be solely responsible for all work performed and materials provided by subcontractors.
5. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor under this contract.
6. To obtain payment for work performed under this agreement: If the Contractor is an individual, the individual Contractor shall provide his/her social security number; If the Contractor is a partnership, or corporation, the Contractor shall provide its federal employer identification number.

**H. Subcontractors:**

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

Payments to Subcontractors:

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the City; or shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. An Agreement modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**I. Non-Assignment:**

Contractor shall not assign its right and duties under this Agreement without the prior written consent of the City Contract Administrator.

**J. Antitrust:**

Any perceived antitrust violation will be reported to the State Attorney General for possible enforcement of antitrust laws.

**K. Anti-collusion/Nondiscrimination Requirements Form:**

The attached "Anti-collusion/Nondiscrimination Requirements" form, on page 2 of this RFP, shall be executed by Offeror and is to be submitted with Offeror's Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this RFP. A contract will not be awarded to an Offeror who has not signed the anti-collusion/nondiscrimination statement.

**L. Hold Harmless/Indemnification:**

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this contract or the performance or failure to perform any work required by this contract. Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this contract, and (c) the performance of the work by Contractor or those for whom the Contractor is legally liable. Upon written demand by the City, shall assume and defend at Contractor's sole expense, any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

**M. Notices:**

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) business days after the date of mailing when mailed by United States mail, certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

1. To the City Contract Administrator as designated in this RFP
2. To Contractor: Contractor's Contract Administrator as defined in Contractor's Proposal

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

**N. Non-Performance:**

1. Delivery Delays: The City reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.
2. Unacceptable Deliveries (Rejections): Upon notification by the City that goods and/or service deliverables provided by the Contractor under this contract are damaged and/or not of the quality specified by the City, such goods and/or service deliverables will be rejected. Contractor shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by the City.
3. Contractor shall remove all rejected materials, equipment or supplies from the premises of the City within ten (10) days of notification. Rejected goods and/or service deliverables not removed from the City's premises within ten (10) days will be regarded as abandoned, shall become the property of the City, and the City shall have the right to dispose of such items.
4. The City reserves the right to authorize immediate purchase from other sources against rejections.
5. Liability: Contractor shall be liable to the City for all costs incurred by the City as a result of Contractor's failure to perform in accordance with the contract. Contractor's liability shall include, but not be limited to:
  - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  - b. Increased cost of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
  - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by the City due to non-responsive performance of Contractor.

**O. Termination Without Cause:**

The City may at any time, and for any reason, terminate this contract by written notice to Contractor specifying the termination date, which shall not be less than thirty (30) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested, addressed to the Contractor's Contract Administrator. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination. In the event the City terminates the contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this contract, and turn over to the City any work completed or in process for which payment has been made.

**P. Termination With Cause/Breach:**

In the event that Contractor shall for any reason or through any cause be in default of the terms of this contract, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's proposal or in Paragraph I of this contract. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this contract as of the mailing date of the default notice. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the contract, and turn over to the City any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable. This contract may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this contract, if that other party has failed to cure that failure or breach within ten (10) days after receipt of written notice thereof from the other party.

**Q. Breach of Contract:**

Contractor shall be deemed in breach of this contract if the Contractor:

1. Fails to comply with any terms of this contract
2. Fails to cure such noncompliance within ten (10) calendar days from the date of the City's written notice or such other time frame, greater than ten (10) calendar days, specified by the City Contract Administrator in the notice.
3. Fails to submit a written response to the City's notification of noncompliance within ten (10) calendar days after the date of the City notice.

All notices under this contract shall be submitted, either by fax or certified mail, return receipt requested, to the respective contract administrator. Contractor shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public

enemy, acts of the City in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

**R. Applicable Law:**

This contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

**S. Compliance with All Laws:**

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this contract. Contractor represents that it possesses all necessary licenses and permits required to conduct business and/or will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work. If the Contractor is a corporation, Contractor further expressly represents that it is a corporation of good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract and any extensions. All City of Hampton business license, personal property, real estate and other applicable tax requirements shall be met by Contractor.

**T. Immigration Reform and Control Act of 1986:**

Contractor/Vendor does not and shall not during the performance of the contract knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**U. Venue:**

Venue shall be in the Circuit Court of the City of Hampton, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by the City of Hampton.

**V. Severability:**

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

**W. Non-Appropriation of Funds:**

It is understood and agreed between the parties herein that the City shall be bound hereunder only to the extent that the funds shall have been appropriated. In the event no funds or insufficient funds are appropriated, the City shall immediately notify the Contractor of such occurrence and this contract shall terminate on the last day funds are available without penalty or expense to the City of any kind whatsoever.

**X. Tax Exemption:**

The City is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under this agreement. Upon request, the City will furnish the Contractor with tax exemption certificates or the City tax exempt number.

**Y. Vendor's Invoices:**

Contractor shall submit to the City all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the products and services required under this contract. Invoices shall not include any costs other than those identified in the executed City Purchase Order awarding this contract or any subsequent Change Orders issued by the Consolidated Procurement Division. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City Purchase Order or Change Orders. Contractor's invoices shall provide at a minimum:

1. Type and description of the product or service installed, delivered and accepted
2. Serial numbers, if any
3. Quantity delivered
4. Charge for each item
5. Extended total (unit cost x quantity)
6. This RFP number and the City Purchase Order number

**Z. Contractual Disputes:**

Any dispute concerning a question of fact as a result of a contract with the City which is not disposed of by agreement shall be decided by the City Purchasing Agent or designee, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days. The decision of the City Purchasing Agent or designee shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision

within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**AA. Warranty/Guarantee:**

Contractor guarantees against defective or faulty material or workmanship for at least on (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by the City. To furnish adequate protection from damage for all work and to repair damages of any kind for which Contractor or Contractor's workmen are responsible, to the building or equipment, to Contractor's own work, or to the work of others. Any merchandise or service provided under the contract which is, or becomes, defective during the warranty period, shall be replaced by the Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from the City.

**BB. Payment Terms:**

To be eligible for payments, all labor, equipment and materials covered under Contractor's invoice must be completed and accepted by the City. The City agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of the postmark shall be deemed the date of payment. Any amounts due the City under the terms of this or any other agreement may be applied against Contractor's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between the City and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any product or service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater will be considered in the evaluation of Proposals. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Offeror shall be net forty-five (45) days.

Special Educational or Promotional Discounts - Contractor shall extend any special educational or promotional discounts immediately to the City during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

**CC. Audits:**

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to, those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this contract and for at least three years following the completion of this contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton, Virginia, which is convenient for the City. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

**DD. Notice of Award:**

Any contract resulting from this RFP will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia 23669.

**EE. Award:**

The City intends to award a contract to a fully qualified Offeror submitting the best proposal based on the criteria set forth herein and as determined by the City in its sole discretion. At the City's sole discretion, the City may reject any or all proposals in whole or in part if such action is determined to be in the City's best interest. The City reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

**FF. Disposition of Proposals:**

All materials submitted in response to this RFP will become the property of the City. One (1) copy of each proposal will be retained for official files, will become a matter of public record after award of the contract, and will be open to public inspection subject to the *Proprietary Information/Disclosure* section of this RFP.

**GG. Exclusivity:**

Any contract resulting from this RFP shall be exclusive with the following exceptions:

The City reserves the right to procure goods or services covered under this contract from a third party, in the event of the following:

Contractor is unable to provide services within the required delivery time.

Contractor is unable to provide the required quantities of service requested.

The City volume demands exceed original intent of the contract.

**Special Terms and Conditions:**

**A. Contract Term:**

This contract term shall be for one (1) year.

**B. Time is of the Essence:**

Time is of the essence in this contract. Contractor expressly acknowledges that in the performance of its obligations, the City is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

**C. Insurance:**

Contractor shall submit to the City Contract Administrator Certificates of Insurance, prior to beginning work under this contract and no later than ten (10) days after award of the contract. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty (30) days prior written notice to the City.

1. The certificates of insurance shall list the City of Hampton, 1 Franklin Street, Suite 345, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this RFP.
2. Insurance shall be maintained during the entire term of the contract and any extensions and shall be of the following forms and limits:

FORMS	LIMITS
Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

3. The establishment of minimum limits of insurance by the City of Hampton does not reduce or limit the liability or responsibilities of the Contractor.
4. The endorsement would be that which is attached to the policy that acknowledges the City as an also insured on all policies we have required to be endorsed.
5. This will be either a direct endorsement that actually names the City or a blanket endorsement that contract states that the City will be named as an also insured on the insurance policy.
6. Contractor shall provide the City with its social security number or federal taxpayer identification number prior to receiving any payments for services under this contract.

**D. Unauthorized Disclosure of Information:**

Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this contract. The Contractor shall save harmless and indemnify the City of Hampton and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer,

pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Contractor shall, upon written demand by the City of Hampton, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of the contract. The City may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify the City for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop and any and all unauthorized disclosures of confidential information.

**E. Copyright/Patent Indemnity:**

Contractor shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify the City and hold the City harmless from any cost, expense, damage or loss incurred in any manner by the City on account of any such alleged or actual infringement.

**F. Cooperative Procurement:**

Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the Contractor(s). The City of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.

**G. FOREIGN AND DOMESTIC BUSINESSES - AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH**

Contractor, whether organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this agreement.

**CITY OF HAMPTON, VIRGINIA  
INSTRUCTIONS AND INFORMATION  
FOR COMPLYING WITH CITY INSURANCE REQUIREMENTS**

This information is to assist the Contractor with understanding the insurance requirements of the City of Hampton. Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the RFP requirements override statements in this document section.**

1. **Agreement/Reference.** All evidence of insurance must identify the nature of your business with the City. Clearly show any assigned number of a bid, contract, lease, permit etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. **It is important that you provide the types of coverage and minimum dollar amounts specified in the RFP document.** Failure to provide the requested amounts may lead to disqualification and increase processing time.
2. **When to Submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For "As-needed" contracts, insurance need not be submitted until a specific job has been awarded. Design Professionals coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
3. **Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the City as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the City is an automatic or blanket additional insured and the substantiating

endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insureds may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable alternatives to **ACORD Certificates and other Insurance Certificates**:

- A. A copy of the **full insurance policy**
- B. **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval
- C. **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (see paragraph 6 below)

Additional Insured Endorsements DO NOT apply to the following:

- A. Indication of compliance with statute, such as Workers' Compensation Law
- B. Professional Liability insurance

- 4. **Renewal.** Upon renewal of any insurance policy, it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.
- 5. **Cancellation.** The contractor/vendor must inform the City thirty (30) days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional insureds is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.
- 6. **Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the City Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk Manager by submitting a request to the Risk Management Department.
- 7. **General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the City is at risk of:
  - A. **Third party claims** which may arise out of your work or your presence or special event on City premises.
  - B. **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
  - C. **Fire legal liability** insurance is required for persons occupying a portion of City premises.
- 8. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your contract or when they are driven off-road on City premises. It is not required for simple commuting unless the City is paying mileage. However, compliance with Virginia law requiring automobile liability insurance is a contractual requirement.
- 9. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
- 10. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent to Self-Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.

A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on City premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the City) any workers' compensation paid to an injured employee of the contractor.

- 11. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the City.

12. **Builder's Risk/Course of Construction** is insurance coverage that protects the owner's interests in the structure as well as materials, fixtures and/or equipment being used in the construction or renovation of a building or structure should those items sustain physical loss or damage from a covered cause. It is required during construction projects and must include building materials in transit and stored at, or away from, the project site. This would also include materials purchased by the City for installation or erection by the contractor.
13. **Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle City funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations as outlined in the RFP.

**ATTACHMENT A:**

**PROCUREMENT OFFICE  
Community Municipal Services/Education  
Agreement for Non-Professional Services**

**ARTICLE I - IDENTIFICATION OF PARTIES**

This Agreement, made in triplicate on this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the City of Hampton, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the ("City") and \_\_\_\_\_ a \_\_\_\_\_ (entity type) having a place of business at \_\_\_\_\_ hereinafter referred to as the ("Contractor").

It is mutually understood and agreed by the parties hereto that the entire contents of RFP # \_\_\_\_\_ Conditions of Contract (General, Special, and other conditions as they may be titled); Intent to Award Letter, dated \_\_\_\_\_; (Exhibit "A") and Contractor's Response for Proposal dated \_\_\_\_\_; (Exhibit "B") are incorporated herein by reference the same if each had been fully set out and attached hereto.

Witnesseth, that the Contractor and the City, in consideration of the mutual covenants contained herein with respect to the performance of professional services by the Contractor and the payment for those services by the City, the City and Contractor agree as set forth below:

**ARTICLE II - SCOPE OF SERVICES**

The Contractor shall perform services to the City in accordance with the highest standards held for \_\_\_\_\_ on a project-by-project basis. Each agreement shall reference a detailed scope of work for that specific project and include a fixed fee and completion date as specified in certain RFP # \_\_\_\_\_ and dated \_\_\_\_\_. In the event that a conflict exists between the referenced proposal of Consultant dated \_\_\_\_\_ and the terms of this Agreement, the terms of this Agreement shall govern and supersede any such conflicting terms of the proposal.

**ARTICLE III - PAYMENT FOR SCOPE OF SERVICES**



In consideration of the work to be performed by Contractor, as set forth under Article II entitled Scope of Services, the City agrees to pay Contractor in accordance with the schedule of fees as specified in and attached hereto as Exhibit "C" as specified in the above referenced Contractor's Response for Proposal dated \_\_\_\_\_.

To obtain payment for work performed under this Agreement, if the Contractor is an individual, the individual Contractor shall provide his social security number. If the Contractor is a proprietorship, partnership or corporation, the Contractor shall provide its federal employer identification number.

#### **ARTICLE IV - TIME COMPLETION**

- A. This Agreement shall commence on the date set forth in Article I herein, and shall continue in force for one (1) year with four (4) additional, one year periods.
- B. Time is of the essence in the Agreement. Contractor expressly acknowledges that in the performance of its obligations, the City is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

#### **ARTICLE V - NON-ASSIGNMENT**

Contractor shall not assign its rights and duties under this Agreement without the prior written consent of the City.

#### **ARTICLE VI - APPLICABLE LAW / COMPLIANCE WITH ALL LAWS / PROMPT PAYMENT / VENUE**

- A. Applicable Law:  
This Agreement shall be deemed to be a Virginia Contract and shall be governed as to all matter whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.
- B. Compliance with all Laws:  
Contractor shall comply with all federal, state and local statutes, ordinances and regulations now in effect or hereafter adopted, in the performance of scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work. Contractor does not and shall not during the performance of the Agreement knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- C. Payments to Subcontractors:  
In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the City; or, shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. An Agreement modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

D. Venue:

Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton.

**ARTICLE VII - NONDISCRIMINATION**

Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonable necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2 and 3 in every subcontract or Purchase Order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**ARTICLE VIII - DRUG FREE WORKPLACE**

During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will provide a drug-free workplace for Contractor's employees.
2. Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor, that Contractor maintains a drug-free workplace.
4. Contractor will include the provisions of the foregoing Sections 1, 2 and 3 in every subcontract or Purchase Order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**ARTICLE IX - NON-APPROPRIATION - AVAILABILITY OF FUNDS**

It is understood and agreed between the parties hereto that the City shall be bound and obligation hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Agreement. In the event the funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the City shall immediately notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

**ARTICLE X - TERMINATION OF AGREEMENT**

A. Termination Without Cause:

The City may at any time, and for any reason, terminate this Agreement by written notice to Contractor specifying the termination date, which shall be not less than ten (10) days from the date such notice is mailed.

Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Article I of this Agreement.

In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination.

If the City terminates this Agreement, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under this Agreement, and turn over to the City any work completed or in process for which payment has been made.

**B. Termination with Cause / Default / Cancellation:**

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Request for Proposal or in Article I of this Agreement.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this Agreement as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Agreement, and turn over to the City any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

**ARTICLE XI - OWNERSHIP OF DOCUMENTS / FREEDOM OF INFORMATION ACT**

Ownership of all materials and documentation including the original drawings and the Plans and Specifications and any copies of any calculations and analysis prepared pursuant to the Agreement between the City and the Contractor, shall belong exclusively to the City. Such materials and documentation, whether completed or not, shall be the property of the City of Hampton, whether the work for which they are made is executed or not. The Contractor shall not use these materials on any other work or release any information about these materials without the express written consent of the City.

Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Security related documents and information are excluded from the Act unless a specific need to know can be shown. Trade secrets or proprietary information submitted by a bidder, offeror, or Contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act provided the bidder, offeror, or Contractor invokes the protections of §2.2-4342, Code of Virginia, prior to, or upon submission of, the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary.

**ARTICLE XII - HOLD HARMLESS - INDEMNIFICATION**

**A. Professional Responsibility of Contractor:**

Contractor agrees, for itself, its agents, servants, employees, subcontractors, and sub-subcontractors, to perform all work hereunder or associated herewith in accordance with any and all applicable professional standards and in accordance with general industry practice and principles.

As to all matters of professional responsibility, Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials, from and against any and all liability, losses, reasonable attorney's fees and litigation expenses or other expenses suffered by any indemnified party or entity as the result of any claim to the extent it is found to have been caused by the negligent acts, errors, or omissions of Contractor, or those for whom Contractor is legally liable.

With the prior approval of the City, Contractor may assume the defense of any such professional liability claims(s) made against the City, its agents, volunteers, servants, employees or officials.

**B. General Responsibility of Contractor:**

As to all matters of liability related to or arising out of this Agreement other than professional liability, Contractor agrees to indemnify and hold harmless the City, its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney's fees and litigation expenses, or other expenses suffered by any indemnified party or entity as a result of any claim to the extent that it is found to have been caused by the acts, errors, or omissions of Contractor or those for whom Contractor is legally liable.

With the prior approval of the City, Contractor may assume the defense of any such claim(s) made against the City, its agents, volunteers, servants, employees or officials.

**ARTICLE XIII - INSURANCE**

Contractor shall submit to the City Contract Administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under this Agreement and no later than ten (10) days after award of the Agreement.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and be acceptable to the City.

The certificate of insurance shall list the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669 as the additional insured for the specified project as outlined in this RFP. The Endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as an additional insured on all policies the City is made an additional insured. This shall be either a direct Endorsement that actually names the City or a blanket Endorsement within the insurance policy that states that under a contractual agreement the City will be named as an also ensured on the required insurance policy. Insurance shall be primary and the additional insured's primary coverage is non-contributory.

Insurance shall be maintained during the entire term of the Agreement and any extensions and shall be of the following forms and limits:

<b>FORMS</b>	<b>LIMITS</b>
Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

The establishment of minimum limits of insurance by the City does not reduce or limit the liability or responsibilities of the Contractor.

IT IS THE REPSONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE AGREEMENT.

Should any of the above described policies be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. The City further requires thirty (30) days notice of cancellation must be noted in the policy or in additional insured and alternate employer endorsements. Failure to obtain such notice provisions will constitute a material breach of this Agreement.

**ARTICLE XIV - EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

**ARTICLE XV - CONTRACTOR'S REIMBURSABLE EXPENSES**

Contractor's reimbursable expenses:

1. The Contractor's reimbursable expenses shall not include those incidental expenses such as supplies, utilities, which are a part of normal overhead costs.
2. Such expenses shall include those not normally a part of XV.1 and those relating directly to the scope of the project. Examples of such shall include, but not be limited to reasonable travel, lodging, fees paid on behalf of the City when authorized by same, specification and drawing reproductions beyond the first two sets when authorized by the City, overtime when authorized by the City.
3. Payment for reimbursable expenses shall be at cost, due monthly upon presentation of an invoice. The City reserves the right to request proof of such expense before payment.

#### **ARTICLE XVI - CONTRACTOR'S ACCOUNTING RECORDS**

Records of Reimbursable Expenses and expenses pertaining to Additional Services on the project and for services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the City or his authorized representative at mutually convenient times.

#### **ARTICLE XVII - AUDITS**

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to, those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, Contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton.

#### **ARTICLE XVIII - MODIFICATION**

There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the City and Contractor.

#### **ARTICLE XIX - SEVERABILITY**

If any part, term or provision of this Agreement shall be found by the Court to be legally invalid or unenforceable, then such provision, or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity or any other provision or portion of the contract document.

#### **ARTICLE XX - FOREIGN AND DOMESTIC BUSINESSES - AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH**

Contractor, whether organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Agreement.

#### **ARTICLE XXI - REPRESENTATIVES AND NOTICES**

Any notice, demand or request by or made pursuant to the Agreement shall be deemed properly made if personally delivered in writing or sent by the parties in the United States mail, postage paid, to the representative specified below or as otherwise designated in writing and mutually agreed.

The City's representation shall be (name and title of representative)

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\_\_\_\_\_  
\_\_\_\_\_

The Contractor's representation shall be (name and title of representative)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:     Doris McRae  
                         Procurement Manager  
                         City of Hampton  
                         1 Franklin Street, 3<sup>rd</sup> Floor  
                         Hampton, Virginia 23669

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Contractor and the City.

**ARTICLE XXII - SIGNATURE OF PARTIES**

As evidence of their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

**ATTEST:     CITY OF HAMPTON**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager/Authorized Designee

OFFICE OF THE CITY ATTORNEY  
Approved as to legal form and sufficiency

Date: \_\_\_\_\_

\_\_\_\_\_  
Deputy City Attorney

**ATTEST:     COMPANY NAME**

\_\_\_\_\_  
Corporate Secretary/Authorized Agent

\_\_\_\_\_  
Signature of Corporate Officer

\_\_\_\_\_  
Title of Corporate Officer

**NOTARY PUBLIC:**

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, by:

\_\_\_\_\_  
Name Title of

\_\_\_\_\_  
Company Name Entity Type (Corporation, Partnership, Limited Liability Company, Sole Proprietor)

on its behalf. He/She is personally known to me or has produced \_\_\_\_\_ as proper identification.

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Registration No. \_\_\_\_\_